SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1964
No. 562

THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION,

Petitioner,

vs.

CLYDE F. THOMPSON, *et al.*, and ERNEST RISLING, *et al.*, members, and as the representatives of, and on the relation of the INDIANS OF CALIFORNIA,

and

THE UNITED STATES OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

Petitioner prays that a writ of certiorari issue to review an order of the United States Court of Claims, which affirmed an order of the Indian Claims Commission. The Commission's order held that the petitioner is not a proper party to, and, therefore, not entitled to intervene in the class suit brought against the United States, by Clyde F. Thompson, *et al.*, and Ernest Risling, *et al.*, as representatives of the Indians of California.

Citations to Opinions Below.

The order of the Court of Claims is unreported and is printed in the appendix hereto *infra*, page 1. The order of the Indian Claims Commission is unreported, and is printed in the appendix, page 2. The opinion of the Commission printed in the appendix hereto *infra*, page 4, is reported in 13 Ind. Cl. Comm. 89. There is also printed in the appendix, page 11, the final judgment of the Commission in the Indians of California case.

Jurisdiction.

The order of the Court of Claims, which is final as to the rights of petitioner, was entered on July 8, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1255(1); and, also, under Section 20(c) of the Indian Claims Commission Act, 60 Stat. 1049.

Questions Presented.

Whether, in the settlement of a class suit before the Indian Claims Commission, certain members of the class, who have brought suits on their own behalf, can be permitted to intervene, in effect, and to share in the judgment, and this right denied to others who are in the same position.

Statute Involved.

The statute involved is the Act of August 13, 1946, which created the Indian Claims Commission, 60 Stat. 1049. Section 2 of that Act provides in part as follows:

> "Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other iden-

tifiable group of American Indians residing within the territorial limits of the United States or Alaska: . . . (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; . . ."

Section 10 of the Act provides:

"Sec. 10. Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission."

Statement.

For many years, the Indians of California have been treated as a single class. In 1928, Congress passed an Act which partially compensated them for the taking of their lands. 45 Stat. 602. Under this Act, the attorney general of California was authorized to bring suit against the United States to recover the value of certain land which had been set aside as a reservation for the Indians by treaty with some of the California tribes, a treaty which the Senate did not ratify. Recovery was had for all Indians of California, who shared individually and equally therein, whether or

not their tribes were parties to the treaty, and whether or not they had any interest in the treaty lands. *Indians of California v. United States,* 98 Ct. Cls. 583 (1942), 102 Ct. Cls. 837 (1944).

In 1946, Congress enacted the Indian Claims Commission Act, 60 Stat. 1049, which was a general jurisdictional Act designed to dispose of all Indian grievances, instead of having them handled by special jurisdictional acts as had been the practice in the past. Section 20(b) of the Act provides for appeals to the Court of Claims from decisions of the Commission.

Under this Act, two groups of individuals filed suit as representatives of the Indians of California. The claims of the two groups, Thompson, *et al,* and Risling, *et al.,* respondents herein, were later consolidated by agreement. They sought to recover for the uncompensated taking by the government of all California land owned by the Indians, less the amount previously paid under the 1928 Act. Various other tribes, or groups of tribes, including the Quechan, generally known as the Yuma Indians, petitioners herein, filed claims on their own behalf seeking to recover the value of specific land, in some cases partly within and partly without the present State of California, which had been owned by their ancestors, and taken by the government without compensation.

The Government moved to dismiss the petition of Thompson, *et al.,* on the ground that the Indians of California, which admittedly was not a "tribe" or "band", was, also, not an "identifiable group", within the meaning of Section 10 of the Indian Claims Commission Act, and thus entitled to file a claim under Section 2 of that Act. The Commission agreed and dismissed the petition, 1 Ind. Cl. Comm. 366 (1950). The pe-

titioners appealed to the Court of Claims and the order was reversed. *Thompson, et al. v. United States,* 122 Ct. Cls. 348 (1952), Certiorari denied, 344 U. S. 856. The Court of Claims based its decision upon the same ground which had impelled Congress to recognize and treat the Indians of California as a single class under the 1928 Act, this being the fact that most of the California tribes had been destroyed or dispersed by the white settlers during and after the gold rush, beginning in 1848; and the Court concluded that the Indians of California should be recognized as a class for the purpose of suing under the 1946 Act.

In this situation, there was a conflict between the claim of the Indians of California as a whole, represented by Thompson, *et al,* and the claims filed by separate tribes or bands asking compensation for specific areas of California land occupied by their ancestors. Thompson, *et al,* claimed the exclusive right to represent all Indians of California. The Commission held that under Section 10 of the Act, the separate tribes had the right to maintain their own cases. 6 Ind. Cl. Comm. 86 (1958).

Before that ruling, the Yana, Shasta and Yokiah tribes and the Mission Bands, all of whom had filed separate claims, had joined with the Indians of California, under stipulations, approved by the Commission, which provided that if it were finally held that the Indians of California were entitled to recover, they would dismiss their own cases; otherwise, that they would be free to resume the prosecution of their separate claims. The claims of the Yokiah, Yana and Shasta tribes, on the joint motion of those tribes and Thompson, *et al,* were later consolidated for all pur-

poses with the main claim of the Indians of California. 6 Ind. Cl. Comm. 674. The Mission Bands were permitted to withdraw and to proceed on their own. 6 Ind. Cl. Comm. 666, 669-671. Nine other tribes, including the Quechan and the Pit River Indians, also proceeded with their own cases.

By the last mentioned order, the Commission divided the State of California into Area A and Area B, for the purposes of the *Indians of California* case. Area A is the portion of the State covered by claims of the Indians who had separate suits pending as of the date of the order, October 6, 1958. It included the California land of the Quechan, and also the land of the Mission and Pit River Indians. The remainder of the State was put in Area B, this being the area to which the *Indians of California* in the main case were then entitled under the terms of the Commission's order, including the land covered by the claims of the Yana, Yokiah and Shasta tribes, theretofore consolidated with the main case.

Under its practice in the case of claims for the taking of Indian land without compensation, the Commission holds a trial first on the issue of liability, and if it finds in favor of the petitioner, enters a judgment holding the defendant liable for the taking of a certain area of land, and determines the date of taking. Another trial is then held to determine the value of the land on the date of taking. The issue of liability was tried in the *Indians of California* case, and it was held that the petitioners were entitled to recover the value of the land in Area B as of the date of taking, which was determined to be in 1853. 8 Ind. Cl. Comm. 1 (1959). Liability trials were also held in various in-

dependent cases, including that of the Quechan, who were held to be entitled to recover for the value of their California land as of 1853, and for the value of their Arizona land as of 1884. 8 Ind. Cl. Comm. 111a (1959). Judgment of liability was also rendered for the Pit River Indians on their separate claim. 7 Ind. Cl. Comm. 815 (1959).

Both the defendant and the petitioners, Thompson, *et al,* appealed to the Court of Claims from the Commission's judgment of liability in the main *Indians of California* case. The government contended, among other things, that recovery could not be supported except on proof of each specific area occupied by each tribe represented in the group, which the petitioners had been unable to do and had not attempted to do, their evidence establishing only that the entire area had been occupied by Indian tribes. The petitioners, Thompson, *et al.,* appealed from the part of the Commission's order holding that they did not have the exclusive right to represent all California Indians, and from the order dividing the State into Area A and Area B. The Quechan filed a brief as *amicus curiae* supporting the position of the Indians of California on the issue of liability, but opposing their claim to the exclusive right of representation. The Quechan brief also requested the Court of Claims to rule on the right of the independent tribes to intervene in the main action, and to state the conditions of such intervention.

In the early part of 1963, further proceedings in the appeal were suspended by stipulation of the Indians of California and the defendant. Upon learning that negotiations for settlement were in progress, the Quechan tribe filed a motion for leave to intervene. They

offered to dismiss their own suit, insofar as it pertained to their California land, and to have its value added to the general fund. The motion was unopposed and was allowed by the Court on June 21, 1963. After unsuccessful negotiations looking toward the inclusion of the Quechan and their California land in the settlement, the Quechan tribe filed a formal petition in intervention in the Court of Claims. A motion was filed by the defendant, the United States, asking that the petition be dismissed or, in the alternative, that the issue be remanded to the Indian Claims Commission. A similar request was made by the Indians of California.

In the meantime, a settlement agreement had been reached by the attorneys for the defendant and the attorneys for the Indians of California, including the Yana, Shasta and Yokiah tribes, and the attorneys for the Pit River and the Mission Indians. Under the terms of the settlement, it was provided that the claims of these tribes and that of the Indians of California would be consolidated for all purposes, and a single judgment entered. *Individual members of all the petitioners will share equally in the award as a single class, without any distinction being made on account of the number of surviving members of any tribe, or the extent or value of the land once occupied by the tribe.* This is the same basis on which the Indians of California, *including the Quechan,* shared, and continue to share, in the judgment fund obtained under the 1928 Act.

The stipulation between the attorneys for the petitioners who participated in the settlement further provided that the single class for whom the judgment would be entered ". . . comprises the Indians of California

(as hereinafter defined), Mission Indians of California and Pit River Indians of California". The phrase, "Indians of California", was defined as ". . . all members of a class or group consisting of descendants of 'all those California Indians who were residents of California on June 1, 1852' ". The stipulation continued, ". . . it being understood and agreed that it will be left to the Indian Claims Commission or the Congress to determine whether for purposes of participation in said single judgment fund, the class known as Indians of California should include those Indians who are now represented in other pending claims before the Indian Claims Commission involving lands in California, namely. . . ." Then followed the names of all of the tribes having independent and unconsolidated suits pending at the time, except the Pit River and Mission Indians. Both of these tribes had independent suits pending, but they were included in the settlement. The Mission case had not been tried, but the Pit River case had been, and, as noted above, a judgment of liability had been entered. 7 Ind. Cl. Comm. 815 (1959).

The petition in intervention alleges, and it must be taken as admitted, for the purpose of the motion to dismiss, that all members of the Quechan tribe are descended from Indians who were residents of California on June 1, 1852, and thus are within the factual definition of the class as set forth in the settlement agreement.

On February 10, 1964, the Court of Claims made an order by which the order of June 21, 1963, allowing the motion to intervene was, *sua sponte*, vacated, and the issue as to whether or not the intervenors were proper parties in the main case was remanded to the

Indian Claims Commission for its determination. The parties stipulated for the matter to be decided by the Commission upon the documents filed in the Court of Claims. This stipulation was filed with the Commission on February 28, 1964, and on March 3, 1964, the Commission made its order determining that the petitioner is not a proper party in the case, and filed its opinion on the same date, *infra,* page 4.

Notice of appeal by the intervenor was filed with the Indian Claims Commission on March 11, 1964. After various motions and briefs had been filed, the Court determined the case, without oral argument, by its order of July 8, 1964, *infra,* page 1, affirming the order of the Indian Claims Commission.

Thereafter, the appeals in the main case having been dismissed, and the record returned to the Indian Claims Commission, the Commission made its "Final Determination or Judgment" dated July 20, 1964, *infra,* page 11, determining that the petitioners in the consolidated dockets were entitled to recover from the defendant the net sum of $29,100,000.00, as a single class, the members of the class being as defined in the order of March 3, 1964, which is the order complained of herein.

Reasons for Granting the Writ.

1. The case is special and important because it involves the rights of other nations, Indian tribes, whose members are, in a sense, wards of the United States.

2. Many individuals are affected by the decision below. There are over 1500 members of the Quechan or Yuma tribe, all of whom are within the factual definition of the class, Indians of California, for whom this

suit was brought, and for whom judgment has been entered. All of them, except those who were born after the cut-off date for the taking of the roll, May 24, 1950, are on the roll of the Indians of California established by the 1928 Act as amended (Act of May 18, 1928, 45 Stat. 602 as amended by Acts of April 29, 1930, 46 Stat. 259, June 30, 1948, 62 Stat. 1166, and May 24, 1950, 64 Stat. 189). Among the members of the six other excluded tribes (see Footnote 2 of the Commission's opinion, page 7, *infra*), there are an unknown but substantial number of Indians who are also members of the Indians of California. Whether these people have any right of choice has never even been discussed in any opinion of the Commission, and it is likely that most of them don't know what has happened to them.

3. The Indian Claims Commission has departed from the accepted and usual course of judicial proceedings, in that its decision, excluding a large segment of the class, was based upon prior orders which did not purport to decide the question, chiefly upon a procedural order adopted for administrative convenience, the so-called A and B order, dividing the State of California into two areas, one consisting of land claimed, in the then posture of the case, by the Indians of California, including the Yana, Shasta and Yokiah tribes, who had then joined with the main group, and the other consisting of land claimed by tribes or groups who were at that time prosecuting their own claims, the latter group then including both the Pit River and the Mission Indians.

In its opinion given in connection with the A and B order, the Commission said:

"Dividing the lands as shown above is for the purpose of simplifying the procedure for presenting and determining the rights of all litigants asserting claims to lands in California, . . ."

6 Ind. Cl. Comm. 666 at 673 (1958).

When the Commission made its interlocutory order of liability in 1959, no further changes in alignment had occurred, and the order held the Government liable for the value, to be thereafter determined, of the land in Area B, with certain exceptions not material here. The land of the Mission and Pit River Indians, as well as the California land of the Quechan, was in Area A at that time. If there had been any intent for this order to establish a final segregation of the tribes, and there was no mention of any such intent, it would have applied to the Mission and Pit River Indians.

The Commission did note, in this order, that the petitioners stated a cause of action for ". . . all those California Indians who were residents of California at the time we acquired it, and their descendants." 8 Ind. Cl. Comm. 1 at 16 (1959). It will be observed that this is practically the same definition of the Indians of California as that set forth in the stipulations pursuant to which the final judgment was entered upon the settlement of the case. *Supra*, p. 9. It is a little broader because we acquired California under the treaty of Guadalupe Hidalgo in 1848. (9 Stat. 922.)

None of the prior orders, upon which the Commission depended in defining the class as a matter of law, contained any requirement that the other tribes or their members should make an election beween recovering for their own land or sharing with the main

group. It is true that in the order which held that the Indians of California could not represent the independent tribes against their will, and that those tribes had the right to maintain their own actions under Section 10 of the Act, a majority of the Commission expressed the view that the Yana, Shasta and Yokiah, who were then in the main case by agreement, should withdraw and proceed with their own cases. 6 Ind. Cl. Comm. 86 (1958). At that time, the majority apparently felt that the tribes who had filed separate suits not only had the right, but should be required, to carry on with them. However, later in the same year, on motion of these three tribes and the Indians of California, their cases were consolidated for all purposes, thus, in effect, permitting them to intervene. 6 Ind. Cl. Comm. 674 (1958).

Even if there had been any order requiring an election, it has been vacated by permitting the Pit River and Mission Indians to come in to the case. They have, in effect, intervened, and on precisely the same terms upon which the Quechan seek to intervene, that is to say, adding the value of their land to the general fund, and participating in the judgment in the main case as members of a single class. Furthermore, the motion of the Quechan for leave to intervene had been made, and allowed, before the Pit River and Mission Indians came in. The Quechan have never intentionally made any final election to proceed with their own case, but on the contrary have at all times claimed and reserved the right to intervene in the main action.

The Commission in its opinion concedes that the Pit River Indians and the Mission Indians are procedurally in the same position as the Quechan, and says: "The question as to which group of claimants are to be in-

cluded in compromise negotiations is between the parties involved and defendant". Page 9, *infra*. *This overlooks the fact that the Pit River, Mission, and Quechan are all members of the same class, Indians of California,* and that the compromise negotiations involved here were negotiations for the settlement of the class suit. By the settlement, the Pit River and Missoin Indians are in effect, permitted to intervene, and their land is, in effect, removed from Area A and put into Area B. While the Federal Rules of Civil Procedure do not apply to the Indian Claims Commission or the Court of Claims, it is submitted that the equitable principles embodied in those rules do apply, and that there can be no discrimination between members of the class in the settlement of a class suit.

The Commission erred in its assumption that there is no prejudice to the Quechan by the exclusion, since they have their own suit. The prejudice is very real and practical. Not only is it a blow to their pride to be excluded, arbitrarily, as they think, from the class to which they have always belonged, but they will recover less in their own suit than they would in the main case. Presumably, this is also true of the five other tribes, the Yana, Shasta, Yokiah, Pit River, and Mission Indians, who have elected, in accordance with the privilege accorded to them, but denied to the Quechan, to intervene in the main case.

As noted above, the recovery in the main case is joint, and the recovery by independent tribes for their own land in separate cases is, therefore, necessarily different. This is the only fair and practicable method of making an award for the Indians of California. Otherwise, a few Indians, if they could be identified, whose ancestors occupied the land under which the gold veins

lay, would receive most of the compensation, and there would be only a pittance for large numbers whose lands were of little value in 1853, which was true of most of the State. Any factual difference between the Quechan and the included tribes, in this respect, is no greater than differences which exist among those included. The decision of the Court of Claims in *Thompson v. United States,* 122 Ct. Cls. 348, cut across all such distinctions when it held that the Indians of California constituted an identifiable group, which could maintain a suit under the 1946 Act.

There is also a factual difference, in that the land of the Pit River and Mission Indians, as well as the land of the Yana, Shasta and Yokiah, tribes, was situated entirely in the present State of California, and part of the land of the Quechan and other excluded tribes lay outside the boundaries of the present State of California. In the case of the Quechan, approximately one-half was in California, and one-half in Arizona. This does not alter the fact that all of the Quechan are Indians of California. The fact that they have another cause of action, *i.e.,* to recover for their Arizona land, should not change their rights in respect of their California land. The Mission Indians, although all of the land for which they seek recovery against the United States, was in California, also have other claims pending before the Commission which are not covered by the settlement. The Commission did not rely on this difference, and properly so. Its decision is based entirely on its own prior orders, and the result is necessarily a discrimination between the Mission and Pit River Indians and the Quechan, who were in the same position in relation to those orders. There

is also discrimination between the Quechan and the Yana, Shasta and Yokiah tribes. Although these tribes were included in the main case at a much earlier stage, there was no direction by the Commission, then or later, requiring the tribes now excluded to make an election.

It is submitted that the legal question of the optional right of an independent tribe or its members, who are also in fact, members of the class, Indians of California, to participate in the general recovery for that class, rather than in a recovery for a specific area of California occupied by their own ancestral tribe, has never been adjudicated on the merits, that the Commission did not decide this case on the merits, and that there has been an unjust discrimination against part of the Indians of California, by extending the option to some and denying it to others.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

WM. DOUGLAS SELLERS,
Attorney for Petitioner.

Dated: October 2, 1964.

FULTON W. HOGE,
Of Counsel.

APPENDIX.

Order of the Court of Claims.

In the United States Court of Claims.

The United States of America, Appellant-Appellee, v. Clyde F. Thompson, Et Al., and Ernest Risling, Et Al., Appellants-Appellees, The Quechan Tribe of the Fort Yuma Indian Reservation, Intervenors-Appellants. App. No. 2-61.

This case comes before the court on motion of Clyde F. Thompson, et al., and Ernest Risling, et al., for an order denying the petition for intervention filed by the Quechan Tribe of Fort Yuma Indian Reservation on November 19, 1964, or, alternatively, an order affirming the order of the Indian Claims Commission entered March 3, 1964, determining that the Quechan Tribe of the Fort Yuma Indian Reservation is not a proper party in the cases of Clyde F. Thompson, et al., and Ernest Risling, et al., as representatives of the Indians of California. Upon consideration thereof, together with the opposition thereto and the briefs of the parties, and without oral argument,

It is Ordered that the said motion of Clyde F. Thompson, et al., and Ernest Risling, et al., be and the same is granted in that the said order of the Indian Claims Commission of March 3, 1964, be and the same is affirmed.

July 8, 1964.

By the Court
Marvin Jones
Chief Judge

Judge Davis took no part in the consideration and decision of this case.

Order Determining Issue Remanded by the United States Court of Claims.

Before the Indian Claims Commission.

Clyde F. Thompson, et al., (Indians of California), Petitioners, Docket No. 31. Ernest Risling, et al., (Indians of California), Petitioners, Docket No. 37. The Quechan Tribe of the Fort Yuma Indian Reservation, Petitioners, (and Plaintiffs in Intervention) Docket No. 319. (In the United States Court of Claims, Appeal No. 2-61). v. The United States of America, Defendant.

This matter comes before the Commission at this time on an order entered by the United States Court of Claims on February 20, 1964, remanding the issue as to whether or not the Quechan Tribe of the Fort Yuma Indian Reservation is a proper party in the cases of Clyde F. Thompson, et al., and Ernest Risling, et al., as representatives of the Indians of California, and, if so, its interest therein.

Upon consideration thereof, together with the joint stipulation of the parties, filed on February 28, 1964, and for the reasons set forth in the opinion this date filed herein.

It Is Determined that the Quechan Tribe of the Fort Yuma Indian Reservation is not a proper party in the cases of Clyde F. Thompson, et al., and Ernest Ris-

ling, et al., as representatives of the Indians of California, which cases are now on appeal before the United States Court of Claims.

Dated at Washigton, D. C., this 3rd day of March, 1964.

Arthur V. Watkins,
Chief Commissioner

Wm. M. Holt,
Associate Commissioner

T. Harold Scott,
Associate Commissioner.

Opinion of the Commission.

Before the Indian Claims Commission.

Clyde F. Thompson, et al., (Indians of California), Petitioners, Docket No. 31. Ernest Risling, et al., (Indians of California) Petitioners, Docket No. 37. The Quechan Tribe of the Fort Yuma Indian Reservation, Petitioners, (and Plaintiffs in Intervention) Docket No. 319. (In the United States Court of Claims, Appeal No. 2-61), v. The United States of America, Defendant.

Decided: Mar. 3, 1964.

Appearances: Robert W. Barker, Walter M. Gleason and Fulton W. Hoge, Attorneys of Record for Petitioners.

Ralph A. Barney, with whom was Mr. Assistant Attorney General, Ramsey Clark, Attorneys for Defendant.

Per Curiam:

The subject cases are now before the Commission upon order of the Court of Claims, dated February 20, 1964, which remanded them for the sole purpose of determining whether the Quechan Tribe of the Fort Yuma Indian Reservation is a proper party in Docket Nos. 31 and 37, and, if so, its interest therein. This issue has arisen upon motion of the Quechan Tribe for leave to intervene, originally filed before the Court of Claims on April 2, 1963. That motion was allowed on June 21, 1963. On December 18, 1963, defendant filed a motion to dismiss the petition of intervention or, alternatively, to remand the issue raised by said petition to this Commission. By its order of February 20,

1964, the Court of Claims vacated its order of June 21, 1963, and remanded this sole issue to this Commission.

By stipulation, filed February 28, 1964, the parties have agreed that the issue remanded by the Court of Claims will be determined upon the pleadings previously filed before the Court of Claims and that Court's orders thereon. We have all such pleadings and other documents relating to this issue before us and, having considered the same, we conclude that the Quechan Tribe of the Fort Yuma Indian Reservation is not a proper party in the cases brought by Clyde F. Thompson, et al., and Ernest Risling, et al. as representatives of the Indians of California, Dockets Nos. 31 and 37 before this Commission.

Briefly, our reasons for so holding are as follows. The two subject cases filed by Thompson and others (Docket 31) and by Risling and others (Docket 37) on behalf of and as representatives of the Indians of California were similar claims whereby each sought to establish an exclusive right to represent all of the enrolled Indians of California and to recover for all lands in California aboriginally used and occupied by "California Indians." There were also some 15 other claims filed by separate "tribes or bands" each seeking recovery for certain areas of land, either wholly or in part within the limits of the present State of California. Included among these 15 other claims was the Quechan Tribe of the Fort Yuma Reservation of California. The Quechan Tribe's claim (which related to lands in California and Arizona) was assigned docket number 319. The Quechan Tribe maintained before this Commission that it had the exclusive right to represent the

Quechan Indians. The issue of representation was decided by this Commission on January 20, 1958. It was then determined that the Thompson and Risling petitioners (Dockets Nos. 31 and 37) did not have the exclusive right to represent all Indians of California and that the other claimants, including the Quechan Tribe, could maintain their own separate claims. Thereafter, on October 6, 1958, the Commission ordered that all of California be divided into two major areas. The area described as Area A included all lands in the State of California which were claimed in separate suits by tribes which had been held entitled to sue independently of the "Indians of California" i.e. Dockets Nos. 31 and 37. The Quechan Tribe (Docket No. 319) was specifically designated as an Area A petitioner. All remaining lands were designated Area B.[1]

On July 31, 1959, the Commission determined that the petitioners in Dockets 31 and 37 had established original Indian title to the "Area B" lands in the State of California (except the Spanish and Mexican private land grants). In the Interlocutory Order entered by the Commission the "Area A" lands, which included the lands claimed by the Quechan Tribe, were specifically excepted.

Therefore, by the decisions of this Commission the claims of the petitioners in Dockets 31 and 37 have

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[1]Actually Area B included the lands in California claimed by the Yokiah Tribe (Docket 176), Yana Tribe (Docket 215) and the Shasta Tribe (Docket 333). Those three tribal claims were upon joint motion of the parties consolidated with Dockets 31 and 37 for all purposes including judgment by order of this Commission under date of October 6, 1958.

been restricted to representative actions on behalf of "the Indians of California" *except* those whose claims were to be maintained by separate tribal organizations, which separate claimants were specifically held to be entitled to maintain their respective claims independently of the Dockets 31 and 37 petitioners.[2] This Commission has determined that the petitioners in Dockets 31 and 37 have established Indian Title to the lands in California *except* those lands which have been claimed by the separate tribal claimants (as enumerated). Therefore, the claims brought by petitioners in Dockets 31 and 37 have been restricted by decisions of this Commission to a circumscribed group of "Indians of California" which excludes specifically the Quechan Tribe. Clearly, then, the remanded question from the Court of Claims must be answered in the negative. The claim of the Quechan Tribe has been specifically excluded from the claims to be determined in the matter of Dockets 31 and 37.

The Quechan Tribe has raised some arguments to which we shall make specific reference. In its response (filed January 22, 1964) to defendant's motion to dismiss the petition in intervention the tribe contended that "the Quechan Tribe or its members are members of the class, known as the Indians of California, for whom the suit is brought." It is true that petitioners

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[2]The petitioners which were to proceed with their respective claims independently of Dockets 31 and 37 were: Northern Paiute Nation, Docket 87; Southern Paiute Nation, Docket 88; Mohave Tribe, Dockets 283 and 295; Washoe Tribe, Docket 288; Quechan Tribe Docket 319; Pitt Rivers, Docket 347; Chemehuevi Tribe, Docket 351; Klamath and Modoc Tribes, Docket 100; and Mission Bands, Docket 80.

in Dockets 31 and 37 originally argued that they did represent *all* Indians of California, which would have included Quechan Indians. However, they did not prevail in their argument before this Commission, and we have found their representation extends only to the restricted identifiable group of "Indians of California" which does not include those tribes (one of which is Quechan) which have filed their own separate claims. One sentence has been quoted from our July 31, 1959, decision as indicating that our determination was not intended to disregard the 1928 Act (the jurisdictional Act of May 18, 1928, 45 Stat. 602, by which Congress established an enrollment of California Indians). The quoted sentence reads as follows:

> We are not to be understood as holding that the enrollment of Indians under the 1928 Act and its amendments is to be ignored for it might well be that, should an award be made, the Congress would order a distribution of the award on the basis of such enrollment as the only practical way of distributing an award after the lapse of over a century. (8 Ind. Cl. Comm. 1, 16.)

This sentence is not related in any manner to our decision in this matter and would, we now believe, have been better left unsaid. Our speculation as to how Congress might accomplish distribution of a prospective award should not have been embodied in our opinion.

Of course it is incumbent upon this Commission to determine the ownership of a claim. We must in our awards define the tribe, band or identifiable group entitled to the judgment. In this case that identifiable group represented by petitioners in Dockets 31 and 37

and entitled to the ultimate award envisioned by this Commission would be the Indians of California except those tribes, bands or identifiable groups which filed their own separate claims, as specifically defined in our decisions of January 20, 1958, and October 6, 1958. Any question as to how the 1928 Act enrollment or any other enrollments might be utilized in effecting any distribution of an award is beyond our jurisdiction and responsibility.

The parties have argued the merits of including the Pitt River Indians and the Mission Indians in a proposed compromise setlement involving Dockets 31 and 37 as well as Dockets 347, 80 and 80-D. Of course neither the Pitt River Indians nor the Mission Indians are included in any compromise negotiations as a matter of right arising from any of our decisions. Both groups are without the circumscribed "Indians of California" identifiable group represented by Dockets 31 and 37 and are included in "Area A." In that respect they are no different than the Quechan Tribe. The question as to which groups of claimants are to be included in compromise negotiations is between the parties involved and defendant. The reasons and merits for including or excluding certain groups is not an issue before us.

The Quechan Tribe has also referred to prejudice to its rights if intervention is not permitted in the Dockets 31 and 37 claims. We can see no basis for such a contention. The proposed compromise settlement in no way affects the claim of the Quechan Tribe.[3] The

[3]In our decision of September 30, 1959, in the matter of Docket No. 319 (Quechan Tribe, 8 Ind. Cl. Comm. 111a) we found that the Quechan Tribe of the Fort

lands claimed by the Quechan Tribe are excluded from the area involved in the proposed settlement The members of the Quechan Tribe are not members of the identifiable group represented by the petitioners in Dockets 31 and 37. In connection with the presentation of the matters pending on appeal before the Court of Claims it appears that the Quechan Tribe was named as an adverse party to the appeal filed by the Dockets 31 and 37 petitioners. Therefore the Quechan Tribe is a party to that appeal and should be in a position to fully defend its rights in respect to the matters pending in that appeal.

Arthur W. Watkins,
Chief Commissioner

Wm. M. Holt,
Associate Commissioner

T. Harold Scott,
Associate Commissioner

Yuma Reservation, California, had a tribal organization and was entitled to maintain the claim set fortn in its amended petition for the lands alleged to have been owned by the Quechan Tribe. We determined that the tribe had held certain lands in California and Arizona and that said lands had been taken by defendant.

Final Determination or Judgment.

Before the Indian Claims Commission.

Clyde F. Thompson, *et al.*, Docket No. 31. Ernest Risling, *et al.*, Docket No. 37. The Baron Long, *et al.*, Bands of Mission Indians of California, Docket Nos. 80 & 80-D. The Pitt River Indians of California, Petitioners, Docket No. 347. Consolidated. v. The United States of America, Defendant.

Upon motion for judgment filed pursuant to a stipulation of compromise settlement, filed herein and incorporated by reference in this determination or judgment; it appearing that appeals by the United States and Clyde F. Thompson, et al., and Ernest Risling, et al. (Court of Claims Appeal 2-61) have been dismissed by the United States Court of Claims; the Commission having held a hearing on the proposed settlement in Los Angeles, Fresno and Eureka, California, and Washington, D. C. on May 13, 14, 15, 18, 19, 22 and 23 and June 3, 4 and 5, 1964, evidence both oral and written having been received and considered; and Findings of Fact and an Opinion having been made and entered in said matter; it further appearing that said compromise settlement was held to be fair and just to all of the parties and has been duly approved by the Indian groups concerned and the authorized representative of the Secretary of the Interior; that final determination or judgment should be entered in accordance with said Stipulation, Findings of Fact and Opinion and the order of consolidation entered herein on this date;

Now, Therefore, it Is Ordered, Adjudged and Decreed that the motion for final determination or judg-

ment pursuant to said stipulation, filed herein, be and the same is hereby granted; that petitioners in said consolidated dockets do have and recover of and from the defendant the net sum of $29,100,000; that said determination or judgment be a single judgment in favor of all of the petitioners (as representatives of the tribes, bands or groups on whose behalf said petitions were presented, as construed and defined by our order of March 3, 1964, in Dockets 31, 37 and 319) as a single class.

Dated at Washington, D. C., this 20th day of July, 1964.

Arthur V. Watkins,
Chief Commissioner

Wm. M. Holt,
Associate Commissioner

T. Harold Scott,
Associate Commissioner